

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

### **I. STATUS OF CLAIMS**

Claims 3-17 and 21-25 are pending in this application. Claims 12-17 have been allowed. Claims 1 and 2 have been canceled without prejudice. Claims 3-9 have been amended to more particularly point out and distinctly claim that which applicants regard as their invention. New claims 21-25 have been added. It is respectfully submitted that no new matter has been added by virtue of this amendment. Support for the new claims and the amended claims are found throughout the specification as originally filed.

### **II. OBJECTIONS**

#### **A. Objections to Specification**

The Examiner objected to the specification on the grounds that on page 7, lines 8 and 1, reference character "51" has been used to designate both "first tank" and "holding tank". In response, the paragraph beginning at line 5 of page 7 of the specification has been amended herewith to correct the above inadvertent typographical errors to indicate that reference numeral "38" refers to the first tank and that reference numeral "51" refers to the holding tank.

Further, the Examiner objected to the specification on the grounds that on page 7, lines 17 and 20, reference character "60" has been used to designate both "first trigger" and "second trigger". In response, the paragraph beginning at line 16 of page 7 of the specification has been amended herewith to correct the above inadvertent typographical errors to indicate that reference numeral "60" refers to the first trigger and that reference numeral "64" refers to the second trigger.

In view of the action taken, it is believed that the above-referenced objections have been obviated.

## **B. Objections to Claims**

The Examiner objected to the claim 4 on the grounds that the term “plate” on line 1 of the claim should be replaced with “plates”. In response, claim 4 has been amended to make the above correction, suggested by the Examiner.

The Examiner objected to the claim 5 on the grounds that the term “comprise” on line 1 of the claim should be replaced with “comprising”. In response, claim 5 has been amended to make the above correction, suggested by the Examiner.

In view of the action taken, it is believed that the above-referenced objections have been obviated.

## **III. REJECTIONS UNDER 35 U.S.C. § 102(b)**

The Examiner rejected claims 1-2 and 6-8 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,549,220 to Whalen (“the Whalen patent”). According to the Examiner, the Whalen patent discloses an apparatus comprising a fluid discharge mechanism, a plurality of light sources, a sequential trigger, a gun shaped housing, a gun-disabling mechanism, a tank and air pump. In addition, the Examiner alleges that the fluid discharge mechanism of the Whalen patent inherently contains a valve mechanism. The Examiner took the position that since “..the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions such as those set forth in the preamble of claim.”

Initially, Applicants acknowledge with appreciation the Examiner’s indication that claims 12-17 were allowed and that claims 3-5 and 9-11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response, claim 3 has been rewritten in independent format including all of the limitations of claim 1 ( i.e. base claim). Accordingly, amended claim 3 is now in allowable form. Since claims 4-10 depend from and incorporate all of the limitations of independent claim 3, these claims are likewise patentable.

The Examiners' rejection to claims 1 and 2 is now moot, as these claims have been canceled without prejudice herewith.

Finally, new claims 21-25 are patentable over the Whelan patent. Specifically, claim 21 depends from and incorporates all of the limitations of claim 3, and is thus patentable for the reasons set forth above.

New claim 22 is patentable over the Whelan patent because the Whelan patent at the very least fails to teach or suggest a water shooting apparatus, as recited in claim 22. Rather, the only fluids which the Whelan patent describes for being emitted from its device are harmful chemical repellants. In addition, the purpose and function of the device of the Whelan patent is entirely different from that of the presently claimed invention as recited in claim 22. Namely, the Whelan patent is limited to a self-defense device which emits light, sounds and/or harmful chemical repellants in order to both blind and/or scare off a violent attacker or attackers. In sharp contrast, the presently claimed invention as recited in claim 22 is directed to a water shooting gun for amusement purposes.

Thus, new claim 22 is patentable over the Whelan patent. Since new claims 23-25 depend from and incorporate all of the limitations of claim 22, these claims are likewise patentable over the Whelan patent.

#### **IV. 35 U.S.C. § 102(e)**

The Examiner rejected claims 1-2 and 6-8 under 35 U.S.C. § 102(e) as being

anticipated by U.S. Patent No. 6,196,471 to Ruthenberg ("the Ruthenberg patent").

According to the Examiner, the Ruthenberg patent discloses a water amusement apparatus comprising a fluid discharge mechanism, a plurality of light ( e.g. LED bulbs) and a sequential trigger.

As mentioned above, claim 3 has been rewritten in independent format including all of the limitations of claim 1 and thus amended claim 3 is now in allowable form. This claim is thus now patentable over the Ruthenberg patent. Since claims 4-10 depend from and incorporate all of the limitations of amended independent claim 3, these claims are likewise patentable. New claim 21 is also patentable over the Ruthenberg patent because this claim depends from and incorporates all of the limitations of amended claim 3.

Further, the Examiners' rejection to claims 1 and 2 is now moot, as these claims have been canceled without prejudice herewith.

Lastly, new claim 22 is patentable over the Ruthenberg patent because the Ruthenberg patent at the very least fails to teach or suggest "a water shooting gun amusement apparatus comprising:"...wherein said discharged water is in the form of a stream selected from the group consisting of a generally coherent water stream and a generally conical water stream...", as recited in new claim 22. Rather, the Ruthenberg patent is directed to an apparatus for creating a multicolored illuminated waterfall or water fountain. The waterfall fall/ fountain effect produced by Ruthenberg renders its device incapable of functioning as a water shooting gun and/or producing a generally coherent or generally conical water stream, as recited in claim 22.

Therefore, new claim 22 is patentable over the Ruthenberg patent. Since new claims 23-25 depend from and incorporate all of the limitations of claim 22, these claims are likewise patentable over the Ruthenberg patent.

## V. CONCLUSION

In view of the actions taken and arguments made it is believed that all pending claims as currently presented are now in condition for allowance. A Notice of Allowance is respectfully requested.

According to currently recommended Patent Office policy, the Examiner is requested to contact the undersigned at the telephone number provided below in the event that a telephone interview will advance the prosecution of this application. An early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard B. Klar', written over a horizontal line.

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